

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

In re )  
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 )  
Cases Filed by DIRECTV, INC., )  
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O R D E R

This Order Pertains to  
the Following Related Cases:

CV 04-00501-PHX (HRH); CV 04-00502-PHX (HRH); CV 04-00503-PHX (HRH);  
CV 04-00504-PHX (HRH); CV 04-00505-PHX (HRH); CV 04-00506-PHX (HRH);  
CV 04-00507-PHX (HRH); CV 04-00508-PHX (HRH); CV 04-00509-PHX (HRH);  
CV 04-00510-PHX (HRH); CV 04-00511-PHX (HRH); CV 04-00664-PHX (HRH);  
CV 04-00665-PHX (HRH)

Case Management Order No. 2

The clerk of court shall enter this order in each of the  
above-numbered cases and cause a copy thereof to be delivered to all  
PARTIES.<sup>1</sup>

A.

General Provisions

(1) Unless and until otherwise ordered by the court, all  
of the above-numbered cases--as well as all of those cases covered

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<sup>1</sup> By PARTIES, the court refers to counsel for represented  
defendants and pro se defendants.

by Case Management Order No. 1 filed March 18, 2004, in Case No. CV 03-0884-PHX, and others, henceforth referred to as "JMC" (meaning "jointly managed cases")--will be managed by the court as a group but are not consolidated.

(2) This Case Management Order No. 2, as well as Case Management Order No. 1 to the extent it has ongoing pertinence to the above numbered cases, shall govern proceedings in the JMC until, after consultation with the PARTIES, a more detailed case management order(s) and/or scheduling order(s) have been entered.

(3) Judge Holland has been designated by the Ninth Circuit Court of Appeals to the District of Arizona for purposes of, among other things, managing this block of related civil cases filed or hereafter filed by DirecTV, Inc. The JMC remain pending in the District of Arizona. Case management and decision-making will be carried on from chambers in Alaska. Trial and any other proceedings requiring the participation of all PARTIES will, insofar as possible, be scheduled in the District of Arizona.<sup>2</sup>

(4) Communications with the court, except as to routine administrative matters shall be in writing in an appropriate pleading, served upon the opposing PARTY and Judge Holland, and filed with the court. PARTIES should not communicate with the court by letter and shall not copy the court with correspondence exchanged between counsel. Facsimile transmission of documents to Judge

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<sup>2</sup> But see paragraph C(3) having to do with oral argument on motions.

Holland is discouraged and shall be accepted only when prearranged with chambers based upon a clear need for expedited delivery.<sup>3</sup>

The court has set up a DirecTV site on the Arizona District Court internet page by which the court may informally advise PARTIES of recent developments in the JMC, i.e., to indicate the execution of an order which will soon be docketed in one or more of the JMC. Counsel may access the internet web page for the District Court of Arizona at <http://www.azd.uscourts.gov>, then accessing "What's New - **Cases of Interest**" for the DirecTV listing, where the court's entries concerning the JMC may be viewed in chronological order. Not all orders for all DirecTV cases will be posted here. Rather, entries will be made under the DirecTV listing when important, broadly applicable orders have been issued, and a link to the full text of those orders (such as Case Management Order No. 1) will be available to counsel.

(5) The court will always endeavor to provide a reasonable amount of time within which PARTIES are to act or respond. In order that the JMC may proceed smoothly and expeditiously, it is absolutely necessary that priority attention be given to obligations in the JMC. Not returning telephone calls or "I'm busy with something else" will not be tolerated. Except where the court has expressly stated otherwise, PARTIES are at liberty to stipulate for an extension of time so long as such extension of time does not adversely impact other obligations on some PARTY in this case and

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<sup>3</sup> Prior authorization for each transmission is required.

so long as the extension of time is brief and reasonable. A stipulation for an extension of more than seven days calendar days in duration shall state the reason for the stipulation, and multiple extensions of the same obligation will, except for compelling circumstances, be rejected.

A stipulation without a statement of reasons for one extension of time for the filing of an answer not exceeding 30 days will be approved. Further extensions of time for the filing of answers will be rejected except for compelling reasons (such as the parties being actively engaged in settlement negotiations).

B.

Filings Submitted to the Court

Ordinarily, counsel are required to submit to the clerk of court a copy of any document tendered for filing. That copy, after docketing, is forwarded to the chambers of the Arizona judge to whom the case is assigned. Commencing upon receipt of a copy of this order, the PARTIES in these JMC shall accomplish the following with respect to any document that is to be filed in these cases:

- (1) The originals only of all documents shall be presented to the clerk of court as usual.<sup>4</sup>
- (2) A legible, complete copy shall be mailed by priority mail to:

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<sup>4</sup> Do not send extra copies to the clerk's office or a previously assigned judge. Doing that causes confusion and needless work.

Judge H. Russel Holland  
United States District Court  
222 West 7th Avenue - Unit 54  
Anchorage, Alaska 99513

concurrent with the filing of the original with the clerk of court.

- (3) Counsel shall incorporate into their certificate or affidavit of service a certification or affirmation that:

**A complete, duplicate copy of this document has been forwarded directly to Judge Holland.**

Although these cases are being jointly managed, and because they are not presently consolidated, no party to a case is obligated to serve papers in his, her, or its separate case in all of the other cases. That is, each party needs to serve future filings on only those parties listed on the docket for the case in which the filing is made.<sup>5</sup> The court and its clerk will very much appreciate the parties limiting filings to those required by the Federal Rules of Civil Procedure and Arizona Local Rules.<sup>6</sup>

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<sup>5</sup> Plaintiff recently filed in all of the JMC cases covered by Case Management Order No. 1 a notice which had to do with only those cases in which defendants had been dismissed. Such unnecessary filings create extra work for everyone and do not advance the JMC.

<sup>6</sup> When counsel have been directed to file something by a given date and that document has been filed, some Arizona counsel routinely also file a "notice" that they have complied. This is nice, but it is extra work for counsel, extra work for the clerk, and another document for the court to review and file. Let's not kill any more trees than we have to.

C.

Motion Practice

(1) Motion practice is stayed pending the development of a subsequent, more detailed case management order which will make provision for phased motion practice and/or limited consolidation of the JMC for purposes of determining issues common to some or all of the JMC. Excepted from this stay order are the following:

- (a) applications for pro hac vice status by counsel;
- (b) applications for the entry of default for failure to answer; and
- (c) stipulations for orders in lieu of motion practice.

(2) The court will consider, ex parte, applications<sup>7</sup> to lift the stay on motion practice for purposes of considering emergency matters. A PARTY wishing expedited consideration of a matter not otherwise permitted by a case management order shall serve and file an application for relief from the stay on motion practice and shall serve and lodge the proposed motion. The application shall be supported by a brief memorandum of reasons explaining why the matter should be taken up on an expedited basis.

(3) Judge Holland has access to the Arizona court's computerized case data, including that data needed to track the progress of motion practice. Motion practice in these JMC will, as and

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<sup>7</sup> Objections or responses to such applications will not be considered.

when authorized, be conducted pursuant to Arizona Local Rules as modified by the court's case management orders. Unless otherwise ordered, oral argument on motions (when granted) will be conducted by telephone to the court at Anchorage, Alaska. Oral argument will be arranged by the court only after briefing is completed and the court has reviewed that briefing.

(4) Counsel are reminded of their obligation to tender proposed orders when submitting motions or stipulations for the court's consideration. The original of a proposed order should be sent to Anchorage, Alaska, with the judge's copy of the motion papers.

D.

#### Preview

The court is still in the process of assembling a complete set of files for the jointly managed cases identified in Case Management Order No. 1. That process has proceeded more slowly than expected because many defendants have neglected to provide the court with their answers and other documents which they consider important to the forward progress of the JMC. On the positive side, the court has reviewed the file materials that it does have, is issuing a large number of minute orders for the taking of specific action in specific cases, and has been advised that plaintiff will refile against certain of the dismissed defendants in cases covered by Case Management Order No. 1 on or before April 26, 2004. The court assumes that plaintiff will cause the issuance and execution of summonses in new-filed cases to be accomplished promptly, and that

returns of service will be filed with the clerk as soon as they are available.

Looking to the future, the court has in mind the following for the development of the jointly managed cases:

(1) If both of the following have not already been accomplished, the court would have plaintiff make its initial disclosures required by Rule 26, Federal Rules of Civil Procedure, and its best, initial settlement demand to the defendant in each (all) of the JMC on or before 60 days from the docketing of this order or 60 days of the filing of a defendant's answer, whichever shall be later.<sup>8</sup>

(2) It strikes the court that if the JMC are to proceed smoothly and efficiently, it would be highly desirable for there to be some organization of defense counsel. Having said that, the court is not unaware of the fact that there are pro se litigants in this case; but inevitably it is counsel who have the expertise to assist the court with scheduling and planning for the JMC. The court encourages defense counsel to consider implementing a means of efficiently communicating with one another (presumably by

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<sup>8</sup> This provision is precatory, not directory. The court will of course not be involving itself in settlement matters in the JMC. However, it is patently in everyone's best interest to conclude cases at the earliest possible date. It appears from court records that there have already been a significant number of settlements of DirecTV cases which parallel the JMC. The court neither expects nor wishes to burden its files with status reports from plaintiff having to do with this provision of this order. The court will keep moving as to the entire body of the JMC until it receives from a party specific advice that a settlement has been reached. Once a settlement has been reached, the court will expect the parties to document that settlement and/or notice the dismissal of the settling party quickly.



e-mail)). If this be done, it is hoped there are pro se litigants who could join in an informal e-mail network for purposes of this case. As regards future planning, however, the court strongly urges defense counsel to collect and communicate amongst themselves their thoughts about how best to manage the JMC. Plainly, the future planning for this case would be greatly advanced if the defendants were more or less of one mind as to how the JMC should proceed.

(3) Implementation of a procedure whereby defendants might agree (without further active participation in the JMC to have the benefit and burden of all rulings which affect such defendants.

(4) A calendar for preliminary motion practice--as to matters not fact-related and/or not requiring discovery.

(5) Development of a discovery plan.

(6) Identification of a lead case or group of cases for purposes of litigating substantive issues common to some or all of the JMC.

F.

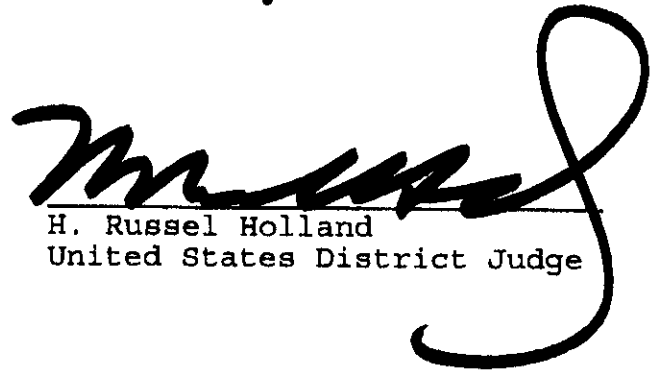
#### Conclusion

The clerk of court will serve plaintiff and each defendant in the above-numbered cases who has appeared or filed an answer at the time this order is docketed.

IT IS HEREBY ORDERED that, after the clerk's initial distribution of this order, and as additional defendants appear or answer, plaintiff shall provide such parties with a copy of this order promptly after receiving an appearance or answer. Plaintiff

shall serve also and file only a certificate or affidavit of the service of this Case Management Order No. 2 upon each defendant.<sup>9</sup>

DATED at Anchorage, Alaska, this 9 day of April, 2004.



H. Russel Holland  
United States District Judge

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<sup>9</sup> Plaintiff will please not file extra copies of this Case Management Order No. 2 with the affidavit or certificate of service.